

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
)
 W K. W W) OAH No. 12-0241-CMB
) DPA Case No.

DECISION

I. Introduction

The issue in this case is whether W W W's monthly household income exceeds the maximum income limit for a household of one under the Adult Public Assistance (APA) program and its related Medicaid category (APA-related Medicaid). Ms. W W's monthly household income does exceed the applicable maximum income limit for Adult Public Assistance and APA-related Medicaid. Accordingly, the termination of Ms. W W's APA and APA-related Medicaid benefits by the Division of Public Assistance is affirmed.

II. Facts

A. Ms. W W's Medical Problems¹

Ms. W W is 65 years old.² She was involved in a severe motor vehicle accident in the mid-1970s in which she suffered a closed head injury and she has been disabled to some degree since that time.³ As of August 2012 she suffered from type 2 diabetes (with complications), hyperlipidemia, coronary artery disease, cerebral infarction, asthma, chronic obstructive pulmonary disease, diabetic gastroparesis, gastro esophageal reflux disease, peptic ulcer disease, diverticulitis, endometriosis, allergies, hyperthyroidism, fibromyalgia, chronic back pain, degenerative joint disease,⁴ osteoporosis, carpal tunnel syndrome,

¹ Ms. W W's medical problems are not relevant to the legal issue of whether she meets the financial eligibility requirements of the APA and APA-related Medicaid programs. They are, however, relevant to the credibility determination which had to be made to resolve the disputed factual issue central to the case. For these reasons, and because they also impart a broader understanding of Ms. W W's overall situation, Ms. W W's medical problems are discussed here.

² Ex. 1.

³ Exs. A1-A3, Ex. B, W W hearing testimony.

⁴ A Computed Axial Tomography or "CAT" scan of Ms. W W's cervical spine revealed significant osteoarthritis, moderate to severe spondylosis, and severe degenerative disc disease (Ex. C1).

dermatitis, periodontitis, organic brain syndrome,⁵ seizure disorder, migraine headaches, vision problems,⁶ anxiety disorder, and bipolar disorder.⁷

B. Ms. W W's Financial Situation and Income

Ms. W W is divorced and lives alone.⁸ Her home is in need of repairs; her bathtub's drain pipe is leaking and this is causing mold problems and rotting the floor nearby.⁹ Her refrigerator is old and failing; if it stops working she will not be able to keep her medicines cold.¹⁰

In August 2012 the Social Security Administration began paying Ms. W W \$686.00 per month in Social Security retirement benefits.¹¹ Ms. W W's receipt of this income is not in dispute.¹²

Another income item is, however, in dispute. The Division asserts that Ms. W W also receives \$744.16 per month from her former husband's military retirement pay.¹³ The Division asserts this based on information obtained through the Division's computer interface with the Social Security Administration.¹⁴

Ms. W W acknowledged in a written filing that she was awarded 40% of her former husband's military retirement pay as part of her divorce settlement.¹⁵ However, she also stated in her written filing that she has not always received these payments on a timely basis and that, as of September 2012, these payments were about \$20,000 in arrears.¹⁶ During the hearing Ms. W was adamant that she has not yet received any of the military retirement pay

⁵ A Computed Axial Tomography or "CAT" scan of Ms. W W's brain revealed moderate-to-severe chronic micro ischemic changes and remote right frontal encephalomalacia (Ex. C1).

⁶ Ms. W W has superior bitemporal relative scotomas (an area of partial or complete blindness surrounded by a normal or relatively normal visual field), and a possible chiasmal lesion (a lesion at or near the union of the two optic nerves) (Ex. C1).

⁷ Ex. B.

⁸ Exs. A1-A3, W W hearing testimony.

⁹ Ex. A3.

¹⁰ Ex. A3.

¹¹ (Ex. 2.4).

¹² See Ex. A2 ("my social security I get").

¹³ Ex. 2.10.

¹⁴ Ex. 2.4. The Division's computer printout identifies the retirement pay as originating from the Veteran's Administration, states that these payments have been made since May 2012, and indicates that the amount of the monthly payment is \$750.00 rather than the \$744.16 counted by the Division. Because the Division has utilized the lower figure, and because use of the lower figure is to Ms. W W's benefit, the lower figure is adopted here.

¹⁵ Ex. A2. The record in this case does not include a copy of Ms. W W's divorce decree or any written agreements or court orders involving property division or spousal support. Because of this, factual findings on these issues must be based on Ms. W W's written statements and hearing testimony, which were somewhat conflicting.

¹⁶ Ex. A2.

due her. Accordingly, a factual dispute exists as to whether Ms. W W is actually *receiving* the \$744.16 each month which the Division included as part of her countable income for purposes of its APA eligibility determination.¹⁷

C. Relevant Procedural History

Ms. W W has received Adult Public Assistance (APA), and APA-related Medicaid benefits, since February 2010.¹⁸ Ms. W W turned 65 in February 2012.¹⁹

Ms. W W applied for Social Security Disability (also known as Supplemental Security Income or SSI) on May 25, 2012.²⁰ Her application for SSI was denied by the Social Security Administration on June 11, 2012.²¹

On July 18, 2012 the Division notified Ms. W W that applicable regulations required her to apply for Social Security benefits (SSA) in order to continue to receive APA benefits.²² The notice further stated that, if Ms. W had not shown the Division proof that she had applied for SSA by August 16, 2012, her APA benefits might be terminated.²³ Also on July 18, 2012 the Division notified Ms. W W that she appeared to be eligible for, and should apply for, Medicare benefits.²⁴

On July 23, 2012 Ms. W W contacted the Division in response to the above-referenced notices.²⁵ The Division employee with whom she spoke confirmed that, because Ms. W W is now 65, she is required to apply for both Social Security Retirement benefits and Medicare in order to continue receiving APA and Medicaid.²⁶ The Division employee further advised Ms. W W that, if these new benefits put her over the income limit for APA and APA-related Medicaid, she could still maintain eligibility for Medicaid by establishing a Qualifying Income Trust (also known as a Miller Trust).²⁷

¹⁷ This factual issue is resolved in the Discussion section below.

¹⁸ Ex. 1.

¹⁹ Ex. 1. The original Social Security Act of 1935 set the minimum age for receiving full Social Security retirement benefits at age 65. *See* Social Security Administration website at <http://www.ssa.gov/pubs/background.Htm> (date accessed October 25, 2012).

²⁰ Ex. 2.4.

²¹ Ex. 2.4.

²² Ex. 2.0.

²³ Ex. 2.0.

²⁴ Ex. 2.1.

²⁵ Ex. 2.2.

²⁶ Ex. 2.2.

²⁷ Ex. 2.2.

On July 24, 2012 Ms. W W advised a Division representative that she had been found eligible for Social Security retirement benefits and Medicaid, retroactive to February 2012, and that she would be receiving a monthly retirement benefit of \$686.00.²⁸ The Division representative informed Ms. W W that the monthly retirement benefit of \$686.00 was countable income for purposes of APA and Medicaid, that the Division would begin counting it effective September 1, 2012, and that her APA and related Medicaid would then cease.²⁹ The Division also advised Ms. W W that she would receive Special Low-Income Medicare Beneficiary ("SLIMB") status, pursuant to which the Division would pay her Medicare Part B premiums.³⁰

On July 26, 2012 the Division sent written notice to Ms. W W that her APA and related Medicaid benefits would end after August 2012 because her countable income exceeded the maximum APA income limit for a household of one (\$1,297.00).³¹ This notice also reiterated that Ms. W W could maintain eligibility for Medicaid by establishing a Qualifying Income Trust (Miller Trust), and that, regardless, she would have Medicare coverage under SLIMB and that the Division would pay her Medicare Part B premiums.³²

On July 30, 2012 Ms. W W requested a hearing to contest the Division's termination of her APA and related Medicaid benefits.³³ She also requested that her benefits be continued pending the issuance of a decision in this case.³⁴

Ms. W W's hearing was held on September 13, 2012. Ms. W W attended the hearing in person and represented herself. Public Assistance Analyst Terri Gagne participated in the hearing by phone and represented the Division. At the end of the hearing, the record was closed and the case became ripe for decision.

III. Discussion

The only issue in this case is the factual issue of whether Ms. W W's countable monthly income exceeds the maximum income level applicable under the Adult Public

²⁸ Ex. 2.3.
²⁹ Ex. 2.3.
³⁰ Ex. 2.3.
³¹ Ex. 2.10.
³² Ex. 2.10.
³³ Ex. 2.12.
³⁴ Ex. 2.12.

Assistance program.³⁵ APA-related Medicaid uses the APA financial eligibility criteria (discussed below) for making APA-related Medicaid financial eligibility determinations.³⁶ Thus, if a person is not financially eligible for Adult Public Assistance, the person is likewise not financially eligible for APA-related Medicaid.³⁷

During 2012, an applicant or recipient living alone and independently is not financially eligible for Adult Public Assistance (or APA-related Medicaid) if he or she receives countable monthly income that exceeds \$1,297.00.³⁸

For purposes of APA and APA-related Medicaid, countable income is determined by determining an applicant / recipient's total (gross) income, and then subtracting any applicable deductions.³⁹ The Adult Public Assistance Program's list of allowable deductions from income is set forth in 7 AAC 40.320 and 7 AAC 40.330. Examples of allowable deductions include the value of any social services furnished the applicant by a governmental or private agency; income tax refunds; any taxes on real property or food refunded by a public agency; certain grants, scholarships, and/or fellowships used to pay for tuition, fees, books, or supplies at an educational institution; foodstuffs obtained through subsistence activities; and certain payments for the foster care of a child. However, the only deduction available to Ms. W W based on the facts of this case is a general deduction of \$20.00 under 7 AAC 40.320(a)(23) for "the first \$20 per month of income, earned or unearned, other than unearned income based on need."

If an applicant or recipient's income, after applicable deductions, exceeds the applicable maximum income level based on household size, then the applicant or recipient is not eligible for APA or APA-related Medicaid; there is no hardship exception.

³⁵ Ms. W W did not assert (a) that the Division's mathematical calculations regarding her countable monthly income were in any way incorrect; or (b) that the Division applied an incorrect income standard in making its APA and/or its APA-related Medicaid eligibility determination.

³⁶ A person who has been approved for Adult Public Assistance (APA) is automatically eligible for Medicaid benefits. *See* 7 AAC 100.002(d)(1); 7 AAC 100.410(b). The category of Medicaid which a person automatically obtains as a result of APA eligibility is known as "APA-related Medicaid."

³⁷ *See* 7 AAC 100.400 at subsection (a)(2) and subsections (a)(10) through (a)(20).

³⁸ *See* 7 AAC 40.310 and *Alaska Adult Public Assistance Manual Addendum 1*, available online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed October 25, 2012).

³⁹ *See* 7 AAC 40.230, 7 AAC 40.310(a), 7 AAC 40.320(a), and 7 AAC 40.350.

Ms. W W asserts that she is not actually *receiving* the \$744.16 per month in military retirement benefits credited to her by the Division. However, the Division presented a printout from its computer interface with the Social Security Administration (Ex. 2.4) which shows this payment being disbursed beginning in May 2012. Ms. W W did not provide copies of any bank statements from this period showing that these payments were *not* being received. Also, although there was no indication at hearing that Ms. W W was knowingly misstating facts, her own medical records demonstrate that she has multiple medical problems which could adversely affect her ability to recall information correctly. Specifically, Ms. W W suffered a closed head injury in a severe motor vehicle accident in the mid-1970s, she has had a cerebral infarction,⁴⁰ and she has organic brain syndrome⁴¹ and seizure disorder.⁴² For these reasons, her memory may be less reliable than other forms of information. Accordingly, the preponderance of the evidence indicates that the payments of \$744.16 are being received by Ms. W W.

Adding Ms. W W's \$686.00 per month in Social Security retirement benefits to the \$744.16 per month from her former husband's military retirement plan results in total gross monthly income of \$1,430.16. Subtracting the \$20.00 deduction from Ms. W W's gross income of \$1,430.16 results in countable monthly income of \$1,410.16. This is \$113.16 over the Adult Public Assistance program's (and APA-related Medicaid program's) applicable monthly income limit of \$1,297.00.

The Division did not dispute that Ms. W W has a great need for additional income and medical benefits, and the record clearly supports that finding. However, the Division and the Commissioner are required to follow the APA income eligibility regulations as currently written. To provide APA and APA-related Medicaid coverage for someone in Ms. W W's current situation would require changes in law, perhaps at both the state and federal level. Those changes cannot be made through the hearing process.

⁴⁰ Cerebral infarctions or strokes can result in confusion and memory loss. See MedLine Plus, a service of the U.S. National Library of Medicine and the National Institutes of Health, accessed online at <http://www.nlm.nih.gov/medlineplus/ency/article/000726.htm> (date accessed October 30, 2012).

⁴¹ Organic brain syndrome includes any acute or chronic mental dysfunction (such as delirium or senile dementia) resulting chiefly from physical changes in brain structure and characterized by impaired cognition. See Merriam-Webster's online dictionary at <http://www.merriam-webster.com/dictionary/organic%20brain%20syndrome> (date accessed October 30, 2012).

⁴² Seizures can also cause a long-term decline in cognitive functions. See article posted by the U.S. National Library of Medicine and the National Institutes of Health, accessed online at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1783429/> (date accessed October 30, 2012).

As the Division has previously advised Ms. W W, she should be able to regain her APA and APA-related Medicaid eligibility by forming a Qualifying Income Trust (Miller Trust). At this point, however, Ms. W W's countable monthly income (\$1,410.16) exceeds the Adult Public Assistance program's applicable monthly income limit (\$1,297.00). And, because Ms. W W's countable monthly income exceeds the Adult Public Assistance Program's applicable monthly income limit, it also exceeds the applicable APA-related Medicaid program limit.

IV. Conclusion

Ms. W W's Social Security retirement benefits and the payments from her former husband's military retirement plan constitute income under the regulations applicable to the APA and APA-related Medicaid programs. Together they exceed the applicable income eligibility limit. Accordingly, the Division was correct to terminate Ms. W W's Adult Public Assistance benefits and her APA-related Medicaid benefits after August 31, 2012. The Division's determination that Ms. W W no longer qualifies for Adult Public Assistance and APA-related Medicaid is therefore affirmed.

Dated this 31st day of October, 2012.

Signed _____
Jay Durych
Administrative Law Judge

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 9th day of November, 2012.

By: Signed
Name: Jay D. Durych
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]